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THE ORIGIN AND DEVELOPMENT OF LAW AND GOVERNMENT.

THE materialist conception of history is now generally conceded to be correct, and that all wars more or less have been caused by the economic necessity of a wider range for the procurement of food and other supplies for a growing tribe or nation.

In the early twilight of history, the laws were feigned to have been handed down direct from deity. This was to secure respect for them by those subject to their rule and to prevent innovation at the hands of daring reformers. Later, as with Solon and Lycurgus and Moses, they were ascribed to some divinely inspired lawgiver. In the case of Lycurgus, the people were sworn to observe them till his return and he never returned. Even as late as Blackstone's day, the common law of England was said by him to be derived from sources "as undiscoverable as those of the Nile", when in fact they were created by the utterances of judges, there being no legislative assemblies, and these judges were almost without exception Catholic priests and bishops. Still, until most recent times, Blackstone's statement was taken by a learned profession as true.

In truth, laws, like men and indeed all animate beings, have their direction from their surroundings, and in each country and age have depended upon and been shaped by the conditions of life. Geological and climatic changes have from time to time altered the conditions of life and the social conditions upon which were based the development of mankind. Man himself has changed. His method of living and nature of protection needed have forced him to adapt himself to the changing conditions around him.

The earliest social condition of which we have any knowledge is that of the family, in which the father gave laws to his descendants. Even as late as Roman history, he possessed over his children the power of life and death. To this day

there are traces of the patriarchal system in the order of succession to the Turkish crown, where the Sultan is simply the oldest living descendant of the founder of the dynasty, and not the son of the deceased Sultan. This patriarchal system is finely set forth in the narrative of the wanderings of Abraham, Isaac, Jacob and Lot. There are survivals of it among the Bedouins of the Desert.

When families became too large, a series of families were organized into a tribe, and in the earliest record of tribal government which we have, the land was owned, not by the father, as under the patriarchal system, but by the tribe. Their weapons were the stone axe, the spear and the bow and arrow. There are still many survivals of this form of government existing among the savage tribes of to-day. In Russia, until the late Revolution, the lands were owned by the "Mir", that is, by the community or township, except those lands which by the strong arm had been appropriated by the sovereign or the nobles. The recent Soviet Revolution was a resumption of the lands appropriated by the sovereign and the nobility, and the partition into severalty of all the lands thus acquired, as well as those still owned by the "Mir", among all the residents of the district. One form of common ownership of land was the Public Commons, which existed in England till a few hundred years ago, and in that country many of the insurrections were due to the appropriation of these Public Commons by the greed of the nobles. In Rome, there was the same process, and the Revolution attempted by the Gracchi was simply an attempt to resume for the people the common land which had been appropriated to their individual use by the patricians.

When men began to change their method of subsistence from herds of cattle and their products to agriculture, it changed the legal ideas of ownership. Those who devoted themselves to agriculture, in which the product was more largely due to individual labor, naturally preferred a division of the soil, so that each man might enjoy more completely the products of his own labor. The contest between those who raised and tended herds and those who lived by agriculture was sharply defined in the struggle between Cain and Abel, but the slowness of the gen-

eral mind to accept the individual ownership of the soil is exemplified by the fact that by the law of Moses the land was to be re-divided and re-allotted every fifty years.

Among the Germans, according to Cæsar, the lands were re-apportioned yearly, but a hundred and fifty years later Tacitus found that the apportionment had become fixed by individual ownership. The common land had become private property.

In the wars of earlier days, no prisoners were taken. For instance, in I Samuel Ch. 15, v. 3, Israel was commanded to slay "men, women and children". The object was to diminish the number of competitors for the use of the soil. Later it became the custom to take prisoners. This amelioration was not due to higher sentiments, but to the fact that prisoners could be utilized as slaves to till the soil.

There being necessarily a disparity in the size of the tribes, many smaller tribes voluntarily, or by the compulsion of some leader, were organized into a nation, and thus other tribes were forced to do the same or be incorporated in some existing nation.

With the creation of tribes, and later of nations, there came to be an exchange of products between those of different climates or localities, and thus the principles of commercial law began.

With the growth in the size of nations, there arose the necessity of a stronger government, so that the entire body of the nation might put forth its united effort to extend its bounds, to protect itself from being invaded and to suppress insurrection. It followed also that there should be classes assigned to discharge different functions, and as some of those in power appropriated an unfair share of the products of labor, it became necessary to have a priesthood set apart to impress the toilers with the idea that distinctions in rank were of divine decree and to take from the toilers a larger proportion of the products of their toil to pay these ministers of heaven, and to conscript soldiers and pay them to maintain order against the machinations and turbulence of those who were dissatisfied with the apportionment of the product of the laborer.

The next stage, after tribal communism, was the slave state,

by which the workers were assigned to production at the cost of the barest support in food and clothing. This system was a costly one, not only by reason of the ignorance and inefficiency of the workers, but because of the lack of inducement to better their work or increase the output. This system, however, gave a leisured class, whose function it was to create culture and to give the world the arts and the beginnings of science. It survived to our day in the Southern States of the Union and in Russia, and also in many barbarous states. It was the weak point in the Roman Empire which disabled it to resist the irruption of the barbarians.

The next evolution was that instituted by the conquering tribes who overthrew the Empire of Rome, by which the lands were parceled out among military leaders, who were supported by feudal dues from the various classes of tenants.

With the invention of improved machinery and of gunpowder, this system was changed into the present system of capitalism and wage-earners. The wage-earners have to a smaller extent benefited by the large output due to machinery, but by no means in the same proportion as have the owners of the machinery. The result is that to-day we are facing a change in the relations between capital and labor, which will materially affect our social system and with it materially modify the structure of our government.

He would be a wise man indeed who could foretell the direction and extent of the modification of the existing order.

As the icebergs drifting down from the polar seas melt in unequal degrees, thus shifting the center of gravity and causing a sudden submergence of the parts above water and the emergence of that which is below, so all changes which have taken place by reason of the economic disturbance caused by the distribution and production of wealth have been inevitable and irresistible.

Whether the change was from the patriarchal to the tribal system, from the tribal to the federation of tribes or the formation of nations, from individual labor by a man and his sons to that of forced servitude or slavery, or from that system to the feudal system and thence to the production of

wealth by highly improved machinery with hired labor, whatever the changes, they have been brought about by the pressure of economic conditions and have been attained regardless of the foresight or the power of those affected.

The laws which from time to time have been issued by sovereigns, by aristocracies, by military chieftains or by free legislative assemblies have been attempts sometimes to repress, and sometimes to express, the demands of the new order. Those resisting change have done so at the expense of much bloodshed, but always, sooner or later, the changed center of gravity has asserted itself and the economic change has expressed itself in new laws and institutions.

Of course, law in its last analysis depends upon force to make it effective. That force in despotisms and absolute monarchies is the army. When the monarch can no longer command the support of the army, the dynasty changes. In republics, the enforcement of law is based upon public opinion and it is well said that, "No law is stronger than the public opinion that is behind it." This is well exemplified in the fact that the Fifteenth Amendment to our Constitution is and has been practically for years a dead letter in many States.

In countries which have limited monarchy, the enforcement of law or the maintenance of government, which is practically the same thing, takes different forms. To take one country only, England, the government under the Norman and early Plantagenet kings was an absolute monarchy, but enforced through feudal barons. Then came, after Runnymede, a long series of years when the nobility and the king contested power, though they sometimes operated together. The people were nothing. Then began the "Hundred Years War" with France and the "War of the Roses", which ended in the almost total extinction of the barons, and with the battle of Bosworth Field Henry VII emerged practically an absolute monarch. The struggle then slowly began between the king and the new nobility on one side, and the growing power of the Commons, which resulted in the triumphant democracy under Cromwell in 1648. In 1660, the monarchy was restored, but was again overthrown by the Revolution of 1688, under which the sov-

ereign became almost a shadow and the government an oligarchy of a new nobility, based not upon feudal conditions, but upon wealth. By the reform of 1832, the power passed largely to the middle classes jointly with the aristocracy. In the last twenty years, the power of the House of Lords has become a mere shadow, and with the advent of the laboring class to power, legislation has become almost completely revolutionized. During all the years since 1688, the government has protected itself by voting appropriations and the Mutiny Act for the army only a year at a time. It is by this device alone that Parliament retains control over the army.

In France, the feudal nobility lost power about the same time as in England, but government under Louis XIV took a different direction and became an absolute monarchy until destroyed by the upheaval of the French Revolution. Then came the triumphs of Napoleon under the egis of republican principles. With his overthrow, France reverted to monarchy till 1870, when it again became a republic, nominally at least, though in fact to a large extent, it is a plutocracy. Its bankers to-day, unable to engage the country in direct war with Russia, are maintaining it through financial and other aid extended to Poland, with a view to forcing Russia to assume the entire indebtedness of sixty billions of francs, which was loaned to the Czar's government by or through the French bankers.

In this country, notwithstanding the broad expressions as to the equality and power of the people set forth in the Declaration of Independence of 1776, at first but little power was really granted to the people. In Congress and in State legislatures, the people were intrusted with the election only of the lower house. The State senates were elected usually by property owners alone. The governors and the judges were usually chosen by the legislatures, and sometimes the judges were appointed by the governors. In most of the States, these restrictions have now passed away.

Under the Federal Constitution, the Senate was made elective at second-hand by the State legislatures, and the President at third-hand by electors chosen by the legislatures, and the judges were selected at fourth-hand, being appointed by the

President and confirmed by the Senate, and to prevent their being influenced by public opinion, the judges were appointed for life.

The method of selecting the President and Senate has been made democratic, but we still retain the anachronism in the selection of Federal judges laid down in the Constitution one century and a third ago. During this period, the essentials in every form of government on the planet have changed more than ours.

Recently, democracy has taken a long step to the front in the extension of suffrage to all without regard to sex.

Of late years, while plutocracy has been gaining considerable control in the practical operations of our government, there has been a steady advance in the power of the proletariat, and among the middle classes there is a hesitation with which to take sides in the great struggle which is inevitable and not far in the future.

We have thus traced briefly the origin of the law and the means by which it is enforced. What is the nominal form of government amounts to but little. The Roman Empire to the latest day of its degradation was the "Roman Republic". Its standards and its coins bore the inscription, "The Senate and The Roman People". To-day, England is nominally a monarchy; in fact, a republic. France is nominally a republic; practically, largely a plutocracy.

In every country, the real test is not the proclaimed form of government, but "Where does the governing power reside?". Judged by that test, what is the government of this country, and what will it be a few years hence?

The question deserves the serious consideration of all thoughtful men.

Walter Clark.